



General Data Protection Regulation (GDPR)

The EU has passed extended Data Protection legislation which comes into force from 25th May 2018. The objectives of this legislation - to protect personal data in an increasingly complex world from threats such as identity theft – are important.

Co-ops will need to ensure they have the information they need about GDPR and consider how they will comply, possibly obtaining legal or other advice. This introductory guidance is intended to bring the attention of co-op governing bodies to GDPR and the need to take action, and to suggest some areas where the legislation may affect co-ops. It is not intended that this introductory guidance is comprehensive or that co-ops should base their approach on our interpretation of it. It is stressed that the CCH is neither indemnified or qualified to give legal advice.

It should be noted that:

- a) co-op governing bodies will need to be aware of the general principles behind the new GDPR legislation
- b) stringent penalties are being introduced for non-compliance with data protection requirements.

Co-ops may currently have a broad understanding that current data protection requirements exist in relation to personal data and that they are required to be registered with the Information Commissioners Office (ICO).

Personal data is information that co-ops hold about a living individual where the individual can be identified from the data (eg. for co-ops – names linked to addresses, phone numbers, email addresses, and information relating to tenancies). It can also include information that has the potential to be used for the purposes of discrimination, such as racial or ethnic origin, political or religious beliefs, physical or mental health issues or sexuality.

Co-ops are almost certainly likely to hold personal data for their members/tenants and for any employees. They may also hold information about prospective tenants, children (there are specific rules relating to children), and others.

Existing data protection requirements are based on 8 principles that personal data shall or must be:

- 1 processed fairly, lawfully and transparently
- 2 obtained or processed only for specific lawful purposes
- 3 adequate, relevant and not excessive
- 4 accurate and kept up to date
- 5 not kept for longer than is necessary
- 6 processed in line with the rights of data subjects
- 7 processed securely
- 8 not transferred outside of the European Union unless there is an adequate level of protection

Co-ops should already have a Data Protection Policy and procedures that implement these principles. GDPR builds on these principles and their implementation.

The ICO provides a useful Getting Ready for the GDPR checklist at <https://ico.org.uk/for-organisations/resources-and-support/data-protection-self-assessment/getting-ready-for-the-gdpr/> It provides two checklists for:

- **data controllers** – people or organisations who decide how personal data will be used.
- **data processors** – people or organisations who “process” personal data on behalf of data controllers but who are not employees of the data controller.

Co-ops who own, and in some cases, manage homes are usually data controllers because they make decisions about how personal data is used. Contractors or service providers using data on behalf of a data controller co-op are usually data processors. But defining which is which is not straightforward and will be different dependent on how each co-op operates. It is possible to

have two data controllers, and for co-ops or service providers to be both controller and processor!

Some of the key issues that need to be considered (this is not a comprehensive list) include:

- having an agreed data protection policy that addresses the issues in the GDPR legislation
- understanding what personal data you hold, what legal basis you have for holding it (ie. in most cases because you are a landlord and you need the information to provide your landlord service), how you get it, where and how you store it, the purposes you are using it for, and having written records that show the co-op's understanding of these issues
- the rights that “data subjects” (ie. the people whose personal data is held) have. There is a suite of rights, but the rights that particularly might affect co-ops include the right for data subjects to access their personal data (co-ops will need procedures to identify how and what information can be provided and timescales – information has to be provided within a month if there is a “subject data request”); the right to rectification (ie. correcting incorrect or partial data); the right to erasure (ie. deleting data that is no longer needed); and the right to be informed. There is a need for co-ops to circulate “privacy notices” to data subjects setting out what data is held; how it is used; and the rights that data subjects have
- ensuring and reviewing that data held is being kept securely
- ensuring that staff and volunteers who manage data are properly trained in handling data in accordance with data protection principles
- having written contracts with external organisations that handle data for you

- having procedures in place to report breaches of data security. There are new requirements to report breaches to the ICO within 72 hours and penalties for non-compliance.

There is not specific GDPR guidance for housing organisations, and how each co-op manages GDPR will be dependent on how they operate, but some particular issues that may be relevant for co-ops include (again – not a comprehensive list):

- the security of co-op papers, reports or minutes that contain information that could be linked to a particular member
- ensuring a written agreement with co-op contractors regarding the use of member phone numbers when carrying out repairs
- the security of information held about the co-op's directors
- ensuring clear and written consent if a member's personal contact information is circulated
- where a co-op uses a service provider, consideration given to who are data controllers and data processors. There may be a need to be a data sharing agreement between them.
- considering where the co-op stores personal information and how long the co-ops keeps the information after it is no longer directly applicable. There are legal requirements to keep some documents for a particular period of time, and there are good practice guidelines relating to data retention for other documents. For example, a share register needs to be kept permanently, but it is considered good practice that information about ex-tenants is kept for 6 years.

Check the Information Commissioners Office's website for further information <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/> and seek appropriate legal or other advice as necessary.